

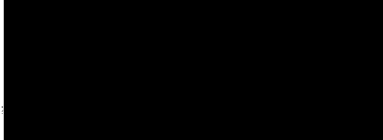
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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



File: WAC 01 259 58735 Office: CALIFORNIA SERVICE CENTER Date:

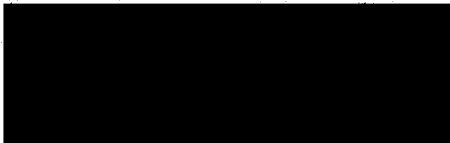
MAY 12 2003

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 203(b)(3) of the
Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

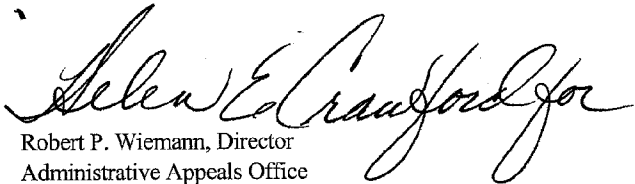
ON BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner filed the Immigrant Petition for Alien Worker (I-140) through former counsel, who filed a Notice of Entry of Appearance as Attorney or Representative (G-28) on March 14, 2001 with only the beneficiary's consent. The null effect of this G-28 is explained, below. The petitioner is an automotive service firm. It sought to classify the beneficiary as an administrative assistant under § 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii). As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor, the Application for Alien Employment Certification (ETA 750).

In a decision dated February 25, 2002 (the decision), the director denied the immigrant visa petition because the evidence did not demonstrate that the beneficiary possessed the degree as required in the ETA 750. A new counsel (recent counsel) and the beneficiary executed another G-28 on March 25, 2002. Only the recent counsel executed the notice of appeal to AAO (Form I-290B), claiming to represent the beneficiary. The beneficiary is not an affected party.

8 C.F.R. § 103.3(a)(1)(iii) states:

(B) *Meaning of affected party.* For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

The beneficiary's appeal must be rejected. Provisions of 8 C.F.R. § 103.3(a)(2)(v) state:

Improperly filed appeal--(A). Appeal filed by person or entity not entitled to file it-- (1) Rejection without refund of filing fee.

An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

Moreover, recent counsel has no standing to appear on behalf of the beneficiary, as 8 C.F.R. § 103.3(a)(2)(v)(A) provides:

(2) *Appeal by attorney or representative without proper Form G-28-(i) General.* If an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitling that person to file the appeal, the appeal is considered improperly filed. In such a case, any filing fee the Service has accepted will not be refunded regardless of the action taken.

No valid G-28 authorizes the Bureau (formerly the Service) to recognize the appearance of recent counsel on appeal. Only the beneficiary executed it. 8 C.F.R. § 292.4(a). AAO will provide a courtesy notice of its decision to recent counsel. 8 C.F.R. § 292.5(a) and 8 C.F.R. § 103.3(a)(2)(x). The petitioner remains as the one entitled to notice. 8 C.F.R. § 292.5(a).

The beneficiary and recent counsel improperly filed an appeal. Neither was a person or entity with legal standing to do so. Therefore, the appeal must be rejected.

ORDER: The appeal is rejected.